IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5294 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DILIPSINH ZALUBHA ZALA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5294 of 2003

MR G RAMAKRISHNAN for Petitioner No. 1

MR RC KODEKAR AGP for Respondent No. 1-5

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 23/07/2003

ORAL JUDGEMENT

The present petition has been filed by the petitioner - detenu who has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by order dated 19/1/2003 passed by the Police Commissioner, Rajkot City, and he has been declared as

"bootlegger".

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, impugned detention order is passed by the detaining authority relying upon four offences registered against the detenu under Bombay Prohibition Act and statements of two independent witnesses. Learned counsel for the petitioner has assailed the impugned detention order on various grounds, as stated in the memo of the petition. According to the learned counsel for the petitioner on the alleged offences registered against the petitioner under Bombay Prohibition Act, detention order can not be passed against the petitioner. He has further submitted that the detaining authority has recorded statements of two witnesses just to fill up the gape between the the date of last offence and the date of order of detention. He has further submitted that the detaining authority has mechanically claimed privilege under Sec.9(2) of the Act, and not provided name and addresses of the witnesses and therefore, the petitioner detenu is prevented from making an effective representation. He has also submitted that the alleged offence registered against the petitioner is a question of law and order and not public order, but the detaining authority has failed to appreciate the difference between law and order and public order. Learned counsel for the petitioner has further submitted that even no affidavit has been filed by the respondents justifying grounds of detention. In support of her arguments, he has relied upon a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393, the relevant portion of which reads as under:

> "Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining

authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

4. Since no affidavit has been filed by the respondents authorities, and no explanation is forthcoming justifying the grounds of detention of the detention order, the impugned order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. In view of the above, the petition is allowed. The impugned order of detention dated 19/1/2003 passed against the detenu is hereby quashed and set aside. The detenu is hereby ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

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